

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Charles Town, West Virginia and Stephens City,)	MB Docket No. 03-12"
Virginia))	RM-10627
)	
(Marion and Johnston City, Illinois))	MB Docket No. 03-13
)	RM-10628
)	
(Mason and Frederickshurg, Texas))	MB Docket No. 03-14
)	RM-10629

NOTICE OF PROPOSED RULEMAKING

Adopted: January 15, 2003

Released: January 17, 2003

Comments Date: March 10, 2003

Reply Comment Date: March 25, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments. Section 73.202(b) of the Rules. Each proposal involves a change of community of license. Each petitioner states that it will file an application for construction permit to effectuate the change of community if granted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. Each of the petitioners filed its proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.¹ In each case, the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the *FM Allotment Priorities*.²

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² The FM Allotment priorities are: (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures ("FM Allotment Priorities")*, 90 FCC2d 88 (1982).

3. This is a multiple docket *Norice of Proposed Rule Making* issued in response to a Commission *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rule Making*. Each proposal has its own docket and rulemaking number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions by avoiding duplicative actions. We seek comments on the following proposals:

A. MB Docket No. 03-12; RM-10627

Petitioners: Cleveland Radio Licenses, LLC
c/o Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Shook, Hardy & Bacon
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Proposal: Cleveland Radio Licenses, LLC ("Petitioner") licensee of Station WXVA-FM, Charles Town, West Virginia, filed a petition for rulemaking to amend the FM Table of Allotments by changing Station WXVA-FM's community of license from Charles Town, West Virginia, to Stephens City, Virginia, and providing Stephens City with its first local aural transmission service.

Coordinates: The reference coordinates for Channel 252A at Stephens City are 39-07-30 **NL** and 78-04-26 **WL**. This allotment would require a site restriction of 13.3 kilometers (8.3 miles) east of Stephens City, Virginia.

Additional Information: This proposal will not deprive Charles Town, West Virginia (2000 U.S. Census population of 2,907), of its only aural transmission service.³ It will also provide a first local aural transmission service at Stephens City, Virginia. Therefore, it would satisfy priority three of the FM Allotment priorities.⁴ Petitioner includes sufficient information to demonstrate that Stephens City (2000 U.S. Census population of 1,146) qualifies as a community to which an FM channel can be allotted pursuant to Section 307(b) of the Communications Act of 1934, as amended.⁵ In addition, Petitioner notes that Stephens City is not located within any Urbanized Area, and Petitioner's 70 dBu signal will not cover any portion of an Urbanized Area.

Station WXVA-FM is presently operating as a 3 kilowatt facility at Charles Town, and it would operate as a 6 kilowatt facility when reallocated to Stephens City. Petitioner's reallocation proposal would result in a net gain of 18,406 people and 674 square kilometers in area served. The loss area would be completely covered by at least five other full-time services and thus would be well served.

FCC Contact: R. Barthen Gorman (202) 418-2180.

³ Charles Town would continue to be served by AM Station WMRE.

⁴ See note 2, *supra*

⁵ Stephens City is an incorporated town that has an elected mayor/town council form of government, and provides many municipal services including police, public works, water, sewer, planning and community development, zoning and permitting, street maintenance, and refuse collection. It has numerous retail establishments, and several churches and civic organizations.

B. MB Docket No. 03-13; RM-10628

Petitioner: Clear Channel Broadcasting Licenses, Inc.
do Mark N. Lipp, Esq.
J. Thomas Nolan, Esq.
Shook, Hardy & Bacon
600 14th Street, N.W.
Suite 800
Washington, DC 20005-2004

Proposal: Clear Channel Broadcasting Licenses, Inc. ("Petitioner"). licensee of Station WDDD-FM, Marion, Illinois, requests that we reallocate Channel 297B from Marion, Illinois to Johnston City, Illinois, as Johnston City's third local aural transmission service, and modify the license of Station WDDD(FM) to reflect the change of community.

Coordinates: The reference coordinates for Channel 297B at Johnston City are 37-45-15 NL and 88-56-05 WL. This allotment would require a site restriction of 7.4 kilometers (4.6 miles) south of Johnston City, Illinois.

Additional Information: This proposal will not deprive Marion (2000 U.S. Census population of 16,035) of its only aural transmission service⁶ and will provide the first local FM transmission service to Johnston City (2000 U.S. Census population of 3,557). Johnston City is not located within any Urbanized Area and Petitioner's 70 dBu signal will not cover any portion of an Urbanized Area. Petitioner is currently licensed to serve Johnston City with Station WDDD(AM) and has a construction permit for expanded hand station WHITE(AM), Johnston City. Station WHITE(AM) has applied to change its community of license from Johnston City to Berwyn, Illinois (BMAP-20010719AAN). Petitioner explains that the merits of the referenced expanded hand application are the subject of a Joint Petition to Deny filed by several licensees with stations in the Chicago, Illinois area. Those licensees argue that should the application to relocate Station WHITE to Berwyn be granted and should Petitioner decide thereafter to turn in its license for Station WDDD(AM) within five years of the date that Station WHITE is licensed, then Johnston City would be left without local service. Petitioner calculates that, based on the expiration date of Station WHITE's current authorization, the referenced five year period will end sometime in 2008. Regardless of any possible future disposition of the Station WDDD(AM) license, petitioner states that it is willing and intends by the filing of the instant petition for rule making in this proceeding to replace the possible removal of local service from Johnston City by relicensing Station WDDD-FM to maintain Johnston City's local service.

Since there will be no change in transmitter site for Station WDDD-FM, there will be no gain or loss areas.

FCC Contact: R. Barthen Gorman (202) 418-2180.

C. MB Docket No. 03-14; RM-10629

Petitioner: Jayson and Janice Fritz
c/o Vincent J. Curtis, Jr., Esq.
Anne Goodwin Crump, Esq.
Alison J. Shapiro, Esq.

⁶ Marion would continue to be served by Stations WAWJ(FM) and WGGH(AM).

Fletcher, Heald & Hildreth, P.L.C.
 1300 North 17th Street, 11th Floor
 Arlington, Virginia 22209

Proposal: Jayson and Janice Fritz (Petitioners) hold a construction permit (File No. BPH-19960826MS) to operate a new FM broadcast station on Channel 289C2 at Mason, Texas. They request that the Commission downgrade Channel 289C2 to Channel 289C3 and reallocate that channel to Fredericksburg, Texas, as Fredericksburg's third local aural transmission service.

Coordinates: The reference coordinates for Channel 289C3 at Fredericksburg are 30-23-37 NL and 99-01-05 WL. This allotment would require a site restriction of **19.3** kilometers (12 miles) northwest of Fredericksburg, Texas.

Additional Information: This proposal would not deprive Mason (2000 U.S. Census population of 2,134) of its only aural transmission service⁷ and will provide the first local commercial FM transmission service to Fredericksburg⁸ (2000 U.S. Census population of 8,911). No Urbanized Areas are affected by Petitioners' change of community proposal. Although 14,837 persons in an area of 4,009 square kilometers served by Channel 289C2 at Mason will lose service by the move to Fredericksburg, no white or gray areas will be created, and Fredericksburg will be provided with its first local commercial FM transmission service.

4. Accordingly, we seek comments on the proposed amendments to the **FM** Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel Nos.</u>	
	<u>Present</u>	<u>Proposed</u>
Charles Town, West Virginia	252A	-----
Stephens City, Virginia	-----	252A
Marion, Illinois	2970	-----
Johnston City, Illinois	-----	297B
Fredericksburg, Texas	-----	289C3
Mason, Texas	224A, 239C2, 273C2 281C2, 289C2	224A, 239C2, 273C2, 281C2

⁷ Mason would retain four **FM** Channels: vacant Channel 224A, Station KOTY-FM on Channel 239C2, Station KBLK on Channel 273C2, and reserved Channel 281C2.

⁸ Fredericksburg already receives local **aural** transmission service from **AM** Station KNAF and has vacant **FM** Channel 201A assigned to it.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by referenced herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March **10, 2003**, and reply comments on or before March **25, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as listed above for each docket.

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission,

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments. Section 73.202(b) of the Commission's Rules.'

9. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte*

⁹ See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who **filed** the comment, to which the **reply is** directed, constitutes an ex parte presentation **and** shall not be considered in **the** proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules. IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(h) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioner. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.